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BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

**Annual Assessment of the Status
of Competition in Markets for the
Delivery of Video Programming**

To: The Commission

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CS Docket No. 98-102

COMMENTS

OF THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE

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SUMMARY

As a result of rules, statutes and policies favoring the cable industry, the National Rural Telecommunications Cooperative ("NRTC"), a Multichannel Video Programming Distributor ("MVPD") marketing and distributing cable and broadcast programming via satellite to nearly 900,000 rural households, continues to be unable to compete fully with the cable industry. NRTC's repeated complaints to the Commission during previous "Annual Reports" on the state of competition in the MVPD market remain largely unaddressed by the Commission, resulting in the cable industry's continued stranglehold on the video delivery market.

On July 8, 1998, NRTC filed an *Emergency Petition for Rulemaking* urging the Commission to remedy, under the terms of the Satellite Home Viewer Act ("SHVA"), one of the greatest unfair and anticompetitive hurdles facing the satellite industry. Under the SHVA, satellite carriers may retransmit network signals only to "unserved households" (i.e., households that, among other things, "cannot receive through the use of a conventional rooftop receiving antenna, an over-the-air signal of Grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network".)¹ The FCC, however, has never defined "unserved households" and "Grade B" specifically for purposes of the SHVA. These statutory restrictions in the SHVA, as currently interpreted, are incomprehensible to consumers, immeasurable as a practical matter, and overtly anticompetitive. They have the effect of

¹ 17 U.S.C. §119(a)(2)(B), §119(d)(10)(emphasis added).

preventing at least 50% of the households at the "Grade B" contour from receiving network signals by satellite even though these households cannot receive an acceptable over-the-air picture from their local affiliates. They frustrate the ability of the satellite industry to compete effectively against the cable industry and unnecessarily restrict consumer choice in selecting video programming providers.

On July 10, 1998, the United States District Court for the Southern District of Florida issued a preliminary injunction against satellite carrier, PrimeTime24. The District Court's interpretation of the "unserved household" restriction will disenfranchise millions of rural consumers because of the District Court's use of Grade B contours as an initial means to determine a household's eligibility to receive network signals by satellite under the SHVA.

In its *Emergency Petition for Rulemaking*, NRTC urged the Commission to seize the opportunity to eliminate this huge barrier to competition in the MVPD market by adopting a pro-consumer definition of "Grade B" for purposes of the "unserved household" definition in the SHVA. NRTC urged the Commission to define "Grade B," exclusively for purposes of interpreting the SHVA, as a contour encompassing a geographic area in which 100 percent of the population, using readily available, affordable equipment, receives over-the-air coverage by network affiliates 100 percent of the time. With that definition, only those consumers who in fact receive local network signals over-the-air would be prevented from receiving distant network signals by

satellite. NRTC again urges the Commission to take pro-competitive action in defining the Grade B concept for purposes of the SHVA.

Furthermore, NRTC continues to urge the Commission to recommend to Congress the elimination of other Copyright restrictions that are anticompetitive, anti-satellite and anti-consumer. According to the SHVA, viewers otherwise eligible to receive network programming by satellite must wait 90 days after terminating cable service to receive network programming by satellite. The 90-day waiting period required by the SHVA for unserved households to receive network programming by satellite only encourages consumers to remain cable households and thus unfairly favors the cable industry. The SHVA also only provides a temporary mechanism by which satellite carriers can retransmit superstation and network stations for a uniform compulsory copyright fee. Unlike the cable compulsory license which continues indefinitely, the SHVA is set to expire at the end of 1999. NRTC encourages the Commission to recommend to Congress the indefinite extension of the SHVA so that satellite operators, like cable operators, may continue to retransmit broadcast programming under a compulsory copyright license. Also, NRTC urges the Commission to support recent Congressional efforts to stay and lower satellite royalty rate increases. The satellite royalty rate was raised late last year to \$0.27 per subscriber per month, effective January 1, 1998, for the retransmission of both superstation and network signals. The new satellite royalty rates are up to 10 times higher than the cable royalty rates and have forced an increase in satellite programming rates for subscribers -- impeding the ability of

rural America to receive popular network and superstation programming via satellite at fair rates, terms and conditions.

NRTC also urges the Commission to revise and strengthen its existing program access rules -- including an award of damages for a program access violation -- to guarantee the availability of programming to all MVPD distributors on like terms and conditions.

Lastly, NRTC urges the Commission to extend its policy of preempting local government and private restrictions on the installation of home satellite dishes to protect viewers who are renters or owners of common property.

NRTC urges the Commission to act quickly and strongly in these areas, to promote competition in the MVPD market and to foster a diversity of video programming sources throughout the country.

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**COMMENTS
OF THE NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE**

Pursuant to Section 1.430 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), the National Rural Telecommunications Cooperative ("NRTC"), by its attorneys, hereby submits these Comments in response to the Notice of Inquiry issued by the Commission in the above-captioned proceeding.² NRTC remains frustrated by the slow pace of competition in the Multichannel Video Programming Distribution ("MVPD") market, especially as applied to rural America. A wide range of rules, statutes and policies continue to impede the development of full competition.

As NRTC noted in its *Emergency Petition for Rulemaking* filed with the Commission on July 8, 1998, the uncertainty surrounding the limitations on

² Notice of Inquiry, 63 Fed. Reg. 36688 (released July 7, 1998) ("NOI").

retransmission of network signals via satellite is preventing the emergence of true competition in the MVPD market.³ In the Petition, NRTC urged the Commission to promote competition in the provision of video programming services and to maximize consumer choice by defining Grade B signal strength for purposes of the Satellite Home Viewer Act ("SHVA") as the level of coverage provided within a geographic area where all households, using readily available, affordable receiving equipment, receive an acceptable over-the-air picture from the local affiliate all of the time. NRTC again urges the Commission to define the Grade B concept for purposes of the SHVA in a pro-competitive, consumer-friendly manner.

Other aspects of the SHVA also impede the ability of satellite carriers to compete against the cable industry. To minimize this anticompetitive situation, NRTC urges the Commission to recommend to Congress several changes to the SHVA. The SHVA requires subscribers otherwise eligible to receive network signals by satellite to wait 90 days after terminating cable services before they may lawfully receive network programming by satellite. This limitation is grossly anticompetitive and should be eliminated.

³ Definition of an Over-The-Air Signal of Grade B Intensity for Purposes of the Satellite Home Viewer Act, *Emergency Petition for Rulemaking*, filed by NRTC, July 8, 1998.

Further, the SHVA has enabled satellite carriers to distribute programming to millions of households without the need for negotiating carriage contracts with individual broadcasters. However, the SHVA is scheduled to expire at the end of 1999. NRTC urges the Commission to recommend to Congress the implementation of a permanent satellite copyright compulsory license.

Late last year, the Copyright Office raised the satellite royalty rates, effective January 1, 1998, to \$0.27 per month per subscriber. These rates are up to 10 times higher than the cable royalty rates. NRTC urges the Commission to support Congressional efforts to lower the satellite copyright royalty rate.

NRTC also urges the Commission to revise and strengthen its existing program access rules -- including an award of damages for a program access violation -- to guarantee the availability of like programming to all MVPD distributors on like terms and conditions. Lastly, NRTC urges the Commission to extend its policy of preempting local government and private restrictions on the installation of home satellite dishes to protect viewers who are renters or owners of common property.

I. INTRODUCTION

1. NRTC is a non-profit cooperative association comprised of 550 rural electric cooperatives, 279 rural telephone systems and several non-member affiliate

organizations located throughout 48 states. NRTC's mission is to assist its members and affiliates in meeting the telecommunications needs of more than 60 million American consumers living in rural areas. Through the use of satellite distribution technology, NRTC is committed to extending the benefits of information, education and entertainment programming to rural America, on an affordable basis and in an easy and convenient manner, just as those services are available over cable in more populated areas of the country. In short, NRTC seeks to ensure that rural Americans receive the same benefits of the modern information age as their urban counterparts.

2. In 1992, NRTC entered into an agreement with Hughes Communications Galaxy, Inc., the predecessor in interest to DIRECTV, Inc. ("DIRECTV"), to launch the first high-powered DBS service offered in the United States. NRTC members and affiliates invested more than \$100 million to capitalize DIRECTV's launch, and in return received distribution rights for DIRECTV programming ("DIRECTV®") in specific regions of the country. NRTC, its members and affiliated companies currently market and distribute up to 185 channels of popular cable and broadcast programming -- including network signals -- to nearly 900,000 rural households through DBS. Numerous channels are also distributed to more than 50,000 rural households using C-Band technology. With only 2% of its subscribers residing in areas served by cable, NRTC's ability to provide these services is crucial to maintaining information access and quality of life for rural America.

3. During the 12 years since its inception, NRTC has participated extensively in Congressional hearings and Commission and Copyright Office proceedings to ensure that rural America receives the same access to programming as is available in urban areas. As satellite technology has developed and flourished, NRTC has decried the slow development of competition in providing rural consumers with choices in video program delivery. In the four prior years that the FCC has sought input from the public to prepare its assessment of the status of competition in markets for the delivery of video programming, NRTC has filed Comments and Reply Comments urging the FCC to amend its rules to enable robust competition to develop in markets for the delivery of video programming. Unfortunately for rural America and the upstart satellite industry, many of the issues raised by NRTC in years passed remain unaddressed by the Commission today.

4. As NRTC noted in previous Comments in prior Annual Competition Report proceedings, as well as its *Emergency Petition for Rulemaking*, the SHVA, in particular, has created unfair and anticompetitive hurdles blocking the delivery of network signals by satellite to millions of rural consumers. Once again this year, the FCC has requested parties to comment on the ability of DBS operators to compete with incumbent cable operators in light of the SHVA's restriction on the retransmission of network broadcast television programming by satellite carriers.⁴

⁴ NOI at ¶ 7(b).

5. NRTC urges the Commission to strengthen its pro-competitive rules and policies in this and other key copyright areas. Full competition in the video delivery market cannot exist until the SHVA's 90-day waiting period is eliminated, the SHVA is made permanent and the satellite royalty rates are lowered to be on par with the cable royalty rates.

6. The Commission's program access rules also must be amended to allow for the recovery of damages by aggrieved MVPDs. Other aspects of the program access rules, such as implementing resolution deadlines for program access complaints, requiring submission of key documents in program access complaints and expanding the scope of the program access rules to include terrestrially-delivered programming, are necessary to promote competition in the MVPD market. The Commission has an open proceeding to reexamine its program access rules, and NRTC once again urges the Commission to strengthen its program access rules to ensure compliance. Lastly, NRTC supports the Commission's preemption of local government and private restrictions on the installation of satellite dishes and urges the Commission to extend its protections to viewers who are renters or owners of common property.

II. COMMENTS

A. **The FCC Should Define Grade B Signal Strength For Purposes Of The SHVA.**

7. A satellite carrier's ability to lawfully retransmit a distant network signal via satellite to a household hinges on whether the household is "unserved," as defined by the SHVA. The SHVA is the statutory copyright licensing scheme whereby copyrighted work (*i.e.* broadcast programming) is licensed to users, in this case satellite carriers, at a government fixed-price and under government set terms and conditions.⁵ According to the terms of the SHVA, satellite carriers may retransmit network signals only to "unserved households" (*i.e.* households that, among other things, "cannot receive through the use of a conventional rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network".)⁶ Determining which households are unserved has been a tremendous source of controversy within the broadcasting and satellite communities. Because the SHVA does not provide a testing mechanism to easily determine which households may lawfully receive network signals by satellite (the SHVA simply references the FCC's definition of signal of Grade B intensity), millions of consumers are unfortunately caught in the middle.

⁵ *A Review of the Copyright Licensing Regimes Covering Retransmission of Broadcast Signals*, U.S. Copyright Office, p. i, August 1, 1997.

⁶ 17 U.S.C. §119(a)(2)(B), §119(d)(10)(emphasis added).

8. NRTC recently filed an *Emergency Petition for Rulemaking* urging the Commission to define the Grade B concept for purposes of the SHVA. NRTC urges the Commission not to wait for the possibility that Congress may clarify its definition of "unserved household." While Congress may well extend the SHVA beyond its scheduled expiration date at the end of 1999, Congress may choose not to change the Act's basic terms, conditions and definitions.

9. As NRTC explained in its Petition, the Commission's rules defining "Grade B intensity" are woefully inadequate for purposes of applying the "unserved household" restriction of the SHVA. Section 73.683(a) provides a chart depicting the requisite field strength for the Grade A and Grade B contours of television stations transmitting on Channels 2-5, Channels 7-13 and Channels 14-69. These rules, however, are outdated and were not intended by the Commission to be used for purposes of identifying "unserved households" under the SHVA.

10. As the Commission recently noted,⁷ when the Grade A and Grade B contours were conceived in 1951, the Grade A contour was meant to define the location

⁷ See Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, PR Docket No. 89-552, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Memorandum Opinion and Order on Reconsideration, ¶¶37-42, May 21, 1998.

in an urban environment where a picture of acceptable quality would be expected to be received at 70 percent of locations, 90 percent of the time. The Grade B contour was meant to define the location in a rural environment where a picture of acceptable quality would be expected to be received at 50 percent of the locations, 50 percent of the time.⁸ Use of this Grade B contour to determine which households receive “an over-the-air signal of grade B intensity” for purposes of the SHVA would have the effect of preventing at least 50 percent of the households at the Grade B contour from receiving network signals by satellite even though they cannot receive a signal of Grade B intensity over-the-air from their local affiliates. Such a result would force subscribers to cable (assuming it is available, which is usually not the case in many rural areas) and clearly be anticompetitive and unfair to countless consumers who are unable to receive a signal of Grade B intensity from the local affiliate through the use of a conventional antenna. Rural Americans, who often reside at the perimeter of the Grade B contour, would be disproportionately impacted.

11. Based upon the FCC’s own regulations and related history, the field strength measurements for a Grade B contour were not drafted by the Commission to define an “over-the-air signal of grade B intensity” for purposes of the SHVA. Rather,

⁸ *Id.* As detailed in the FCC’s Third Notice of Further Proposed Rulemaking in the Television Broadcast Service proceeding 16 Fed. Reg. 3072, Docket Nos. 8736, 8975, 8976, 9175 (April 7, 1951), while the FCC provided a means to measure the Grade B contour where 50 percent of the households could receive a signal of Grade B field strength 50 percent of the time, it expected that 50 percent of the households at the contour would receive an acceptable picture 90 percent of the time.

the Commission developed its rules regarding field strength contour measurements to predict mileage spacing between television broadcast stations operating on the same and adjacent channels so as to prevent interference between stations as they were initially licensed by the Commission.⁹ These rules were intended to measure a geographic area where viewers are more or less likely to receive coverage — not to predict which households can actually receive an acceptable broadcast picture from their network affiliate station through the use of a conventional rooftop antenna.

12. NRTC's *Emergency Petition for Rulemaking* was prompted by the then pending Preliminary Injunction Order -- since recently issued -- by the United States District Court for the Southern District of Florida ("District Court") against PrimeTime24 ("PT24").¹⁰ The Court's interpretation of the "unserved household" restriction will disenfranchise millions of rural consumers because of the use of Grade B contours as an initial means to determine a household's eligibility to receive network signals by satellite under the SHVA. The Preliminary Injunction Order prohibits PT24, the defendant, from providing CBS and Fox programming to any customers "within an area shown on Longley-Rice propagation maps, created using Longley-Rice Version 1.2.2 in the manner specified by the Federal Communications Commission ("FCC"), as receiving a signal of

⁹ 16 Fed Reg 3072 (Apr. 7, 1951).

¹⁰ *CBS, Inc., et al. v. PrimeTime24 24 Joint Venture*, Supplemental Order Granting Plaintiff's Motion for Preliminary Injunction, Civil Action No. 96-3650-CIV-NESBITT (S.D. Fla. July 10, 1998)("Preliminary Injunction Order").

at least grade B intensity of a CBS or Fox primary network station.”¹¹ According to the FCC’s OET Bulletin No. 69 on the Longley-Rice Methodology for Evaluating TV Coverage and Interference, July 2, 1997, the Longley-Rice point-to-point propagation model will reflect a station’s Grade B contour since the models are intended to depict a “median” TV service coverage area where 50% of the locations receive reception 90% of the time.¹² Contrary to the District Judge’s statement that the Longley-Rice maps depict an area where all households are “receiving a signal of at least Grade B intensity,” not all customers residing in the contour do in fact receive a signal of Grade B intensity.

13. NRTC’s *Emergency Petition for Rulemaking* recognizes that satellite service is a communications link -- requiring reliability approaching 100%, not 50% -- and proposes a definition of Grade B signal strength which clearly identifies which households are “unserved” and are eligible to receive network signals by satellite. NRTC proposed that the Commission define “Grade B,” exclusively for purposes of interpreting the SHVA, as a contour encompassing a geographic area in which 100 percent of the population, using readily available, affordable equipment, receives over-the-air coverage by network affiliates 100 percent of the time. With that definition, only those consumers who in fact receive local network signals over-the-air would be prevented from receiving distant network signals by satellite. Within the context of the SHVA, Congress deferred

¹¹ Preliminary Injunction Order, ¶ 3(a).

¹² OET Bulletin No. 69, p. 7.

to the FCC's expertise in defining this Grade B measurement. To that end, NRTC again urges the FCC to seize this opportunity to eliminate this existing barrier to competition in the MVPD market by adopting, well in advance of the scheduled expiration of the SHVA, a workable, consumer-friendly definition of unserved households exclusively for purposes of the SHVA.

B. The FCC Should Recommend to Congress the Revision of Other Aspects of the Copyright Law which Impede the Ability of the Satellite Industry to Compete Against Cable.

14. Other aspects of the SHVA impede the ability of satellite carriers to compete against the cable industry. The SHVA requires subscribers otherwise eligible to receive network signals by satellite to wait 90 days after terminating cable services before they may lawfully receive network programming by satellite. This limitation is grossly anticompetitive and should be eliminated. Further, the SHVA is scheduled to expire at the end of 1999. The SHVA has enabled satellite carriers to distribute programming to millions of households without the need for negotiating carriage contracts with individual broadcasters. NRTC urges the Commission to recommend to Congress the implementation of a permanent satellite copyright compulsory license so that the satellite industry -- like the cable industry -- will have reasonable assurance of the continued availability of a statutory license. Lastly, the satellite royalty rate was raised precipitously late last year to \$0.27 per subscriber per month, effective January 1, 1998, for the retransmission of both superstation and network signals. The new satellite royalty

rates are disproportionately higher than the cable royalty rates and have forced an increase in satellite programming rates for subscribers -- impeding the ability of rural America to receive popular network and superstation programming via satellite at fair rates, terms and conditions. NRTC urges the FCC to support Congressional efforts to lower the satellite copyright royalty rates and make them more comparable to cable's rates.

C. The FCC Should Strengthen Its Program Access Rules.

15. As in previous years, the Commission requested Comments again this year on the effectiveness of its program access rules.¹³ For more than six years, NRTC has urged the Commission -- year after year -- to award damages to aggrieved MVPDs that have followed the Commission program access complaint procedures and established that they have been unlawfully overcharged for programming. Just this winter, NRTC filed Comments and Reply Comments in the Commission's proceeding to review its program access rules.¹⁴ NRTC, along with other non-cable MVPDs urged the Commission to strengthen its program access rules by imposing damages for program access violations,

¹³ NOI at ¶21.

¹⁴ Implementation of the Cable Television Consumer Protection and Competition Act of 1992; Petition for Rulemaking of Ameritech New Media, Inc. Regarding Development of Competition and Diversity in Video Programming Distribution and Carriage, Notice of Proposed Rulemaking, CS Docket No. 97-248, RM No. 9097, 64 Fed Reg 1943 (December 18, 1997)(“FCC’s Ameritech NPRM”).

expediting the resolution of program access complaints and deterring evasion of its program access rules.

16. NRTC once again urges the Commission to use its broad authority under Section 628 and to order damages for violations of the program access rules. Other sanctions, such as requiring the vendor to revise its contracts in the future to comply with program access requirements, are insufficient to deter violations of the program access rules, and they will never make the aggrieved MVPD whole. Particularly in unlawful price discrimination cases, there is no legitimate reason to permit the violator to retain monies it was not authorized to charge in the first instance. Restitution in the form of damages is entirely appropriate to return those ill-gotten gains to the MVPD who should never have been required to pay them initially.

17. More than five years ago, in its Petition for Reconsideration of the Commission's original Program Access Order, NRTC argued that an award for damages is needed to put regulatory "teeth" in the Commission's program access complaint process and to make the complainant whole. NRTC noted then that it is

unfair to require the MVPD to continue paying the discriminatory rates to the programmer with no hope of ultimately recovering these unfair payments from the programmer in the form of damages. Fines alone will be an inadequate deterrent, and they will not benefit the video distribution market or make the aggrieved MVPD whole.¹⁵

¹⁵ Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92-265, Petition for

To this date, the Commission's continued, inexplicable hesitancy to impose damages provides no hope for competing MVPDs to recover damages caused by the defendant's discriminatory practices. Without the assurance of being made whole by an award of damages, many competing MVPDs involved in a program access complaint may be willing to settle the complaint, even if the settlement does not provide the MVPD with fair rates, terms and conditions. Without an obligation to pay competing MVPDs restitution for damages caused by their discriminatory behavior, programming vendors are not properly incented to follow the program access rules.

18. Ameritech's Petition for Rulemaking and the response to Ameritech's Petition have made it abundantly clear that the Commission's failure to impose damages for program access violations has substantially delayed the ability of MVPDs across-the-board to compete effectively with cable. In issuing a Report and Order in connection to Ameritech's Petition, NRTC again urges the Commission to open the way for true competition in the MVPD market by requiring program vendors found to be in violation of the program access rules to pay to an aggrieved MVPD damages caused by the vendors' unfair and illegal practices.

19. NRTC also urges the Commission to strengthen other aspects of its program access rules. In its Reply Comments to the FCC's Ameritech NPRM, NRTC urged the Commission to expedite the complaint process by setting reasonable deadlines for resolution of the proceedings. NRTC also urged the Commission to adopt blanket rules requiring the automatic submission -- without the necessity of a lengthy discovery process -- of all documents upon which the defendant intends to rely upon to establish its defense.

20. Lastly, NRTC argued in connection with last year's Annual Competition Report that the Commission should broaden the scope of its program access rules to apply to the delivery of video programming by terrestrial means. NRTC continues to believe that the Commission has ample authority to require vertically integrated cable programming to be made available to competing MVPDs in accordance with the program access rules - - regardless of delivery method. To that end, NRTC urges the Commission to exercise its authority under Section 628(b) to prohibit the practices of vertically integrated cable programmers that significantly hinder and prevent competing MVPDs from providing consumers access to satellite cable programming or satellite broadcast programming, including the practice of "switching" satellite programming to terrestrial delivery technologies to evade the rules.

D. The FCC Should Expand Its OTARD Rules To Include Renters And Other Individuals That Do Not Exclusively Control Their Residences.

21. In its NPRM, the Commission requested comments on the status of video delivery competition for multiple dwelling units ("MDUs").¹⁶ In particular, the Commission asked what impact its over-the-air reception device ("OTARD") rules have on MDU competition.¹⁷ While the FCC's OTARD rules protect the ability of homeowner's to install antennas (including DBS dishes) one meter or less in diameter, the Commission's rules currently do not apply to any MDU residents who rent their residences. The FCC released a Further Notice on August 6, 1996 proposing to extend its preemption rule to include renters and other individuals that do not exclusively control their residences.¹⁸ NRTC filed Comments and Reply Comments in that proceeding on September 27, 1996 and October 28, 1996, respectively, urging the FCC to protect all viewers against zoning restrictions on satellite antennas, including those that are not fortunate enough to own outright their residential property. In its Comments and Reply Comments to the FCC's NOI released in connection with the 1997 Annual Assessment of the Status of Competition in Markets for the Delivery of Video Programming, NRTC

¹⁶ NPRM at ¶ 26.

¹⁷ Id.

¹⁸ Preemption of Local Zoning Regulation of Satellite Earth Stations; Implementation of Section 207 of the Telecommunications Act of 1996 Restriction on Over-the-Air Reception Devices, IB Docket No. 95-59, Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd 5809 (1996).

again urged the Commission to expand the scope of its OTARD rules and enable consumers not owning their residences to enjoy the same options in video delivery as homeowners already enjoy. This issue, however, still remains unresolved by the Commission.

22. As noted by DIRECTV in its Reply Comments to the Further Notice in IB Docket No. 95-59, 27% of Americans live in multiple dwelling units ("MDUs") and 46% of Americans live in rental space. Approximately 55% of minorities do not own their own homes. In light of the fact that so many viewers are not protected by the Commission's current preemption rules, NRTC again urges the Commission to extend its rules to cover all "viewers," as required by Section 207 of the Act, not just homeowners.¹⁹

III. CONCLUSION

23. Competition in markets for the delivery of video programming continues to be hindered by rules, statutes and policies favoring the cable industry. Without competition, consumers many times are provided with no option but to take video programming delivery services from the incumbent cable operator on terms and rates dictated by the cable operator. The Commission should address this anticompetitive situation by defining Grade B signal strength for purposes of the SHVA as the level of

¹⁹ 47 U.S.C. § 207.

coverage provided within a geographic area where all households, using readily available, affordable receiving equipment, receive an acceptable over-the-air picture from the local affiliate all of the time. Also, to remedy other aspects of the SHVA which impede the ability of satellite carriers to compete against the cable industry, the Commission should recommend to Congress: (1) the elimination of the 90-day wait period required by the SHVA for unserved households to receive network programming by satellite after having received the network programming by cable; (2) the indefinite extension of the SHVA; and (3) the stay and revision of the satellite carrier compulsory royalty fee. NRTC also urges the Commission to revise its existing program access rules to guarantee the availability of like programming to all MVPD distributors at like terms and conditions. Lastly, NRTC urges the Commission to extend its policy of preempting local government and private restrictions on the installation of home satellite dishes to protect viewers who are renters or owners of common property.

WHEREFORE, THE PREMISES CONSIDERED, the National Rural Telecommunications Cooperative urges the Commission to consider these Comments as part of its Annual Report to Congress on the Status of Competition in the Market for the Delivery of Video Programming and to revise its rules and make recommendations to Congress in accordance with the views expressed herein.